

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RICHARD F. HART and
LILA N. HART,

Plaintiffs,

v. // CIVIL ACTION NO. 1:07CV52
(Judge Keeley)

SHERIFF TED MASTON, Pleasants
County Sheriff's Department,
SGT. C.E. TEMPLETON, Pleasants
County Sheriff's Department,
WILLIAM STULL, St. Mary's
Police Department, PLEASANTS
COUNTY SHERIFF'S DEPARTMENT,

Defendants.

ORDER FOLLOWING DECEMBER 19, 2007 HEARING

On December 19, 2007, the Court conducted a hearing on two motions to dismiss filed by the defendants in this case.

The Court first addressed Defendant Pleasants County Sheriff's Department's (the "Sheriff's Dept.") motion to dismiss, in which it argues that it is not an appropriate party because it is not a "person" acting under color of state law, as required by 42 U.S.C. § 1983. At the hearing, counsel for Plaintiffs Richard and Lila Hart (jointly "Hart") conceded that the Sheriff's Dept. is not a proper party to this action. Accordingly, the Court **GRANTED** the Sheriff's Dept.'s motion (dkt. no. 4), and **ORDERED** that the Pleasants County Sheriff's Department be **DISMISSED WITH PREJUDICE** from this case.

ORDER FOLLOWING DECEMBER 19, 2007 HEARING

The Court then **GRANTED** an oral motion made by Hart for leave to file an amended complaint, and **ORDERED** that it be filed within **ten (10) business days** from the date of the hearing, December 19, 2007.

Finally, the Court considered the "Motion to Dismiss Counts Four and Five of Plaintiff's Complaint," filed by Defendants Sheriff Ted Maston ("Maston") and Sgt. C.E. Templeton ("Templeton"). For reasons appearing to the Court, it directed Maston and Templeton to submit further briefing on the motion within **ten (10) business days** from the date of the hearing, December 19, 2007. Hart is directed to file any response within **fourteen (14) days** from the date of service of Maston and Templeton's briefing. Maston and Templeton's motion to dismiss (dkt. no. 6) is, therefore, **HELD IN ABEYANCE** until fully briefed.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record.

DATED: December 20, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE